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**BY EMAIL TO ORLA.OBRIEN@DBEI.GOV.IE**

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**Re: Public Consultation on a Review of the Limited Partnerships Act 1907**

Dear Orla

Our submission in response to the Department of Business, Enterprise and Innovation's Public Consultation (dated 18 January 2019) on a Review of the Limited Partnerships Act 1907 is attached. Our firm's contacts for the purposes of this submission are:

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Yours faithfully

**ARTHUR COX**

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## Arthur Cox Submission in response to the Public Consultation on a Review of the Limited Partnerships Act 1907

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We welcome the consultation by the Department of Business, Enterprise and Innovation on the Limited Partnerships Act 1907 (the “**1907 Act**”). In our view, limited partnerships serve an important economic purpose, but Ireland’s limited partnership framework requires modernisation both for the benefit of domestic limited partnerships, and to ensure that Ireland remains an attractive jurisdiction in which to do business for global investors who favour limited partnership structures, in particular in the areas of investment funds, private equity and venture capital.

### 1. **What are the benefits of limited partnerships for the Irish economy?**

#### 1.1 **Background**

The partnership is one of the oldest, and most commonly-used, structures for business activity. Partnerships are used by an extremely wide range of people, from small family businesses, to large professional services firms, to global private equity and venture capital organisations. The first common law limited partnership statute was introduced in Ireland in 1781, and today limited partnerships are used globally to enable partners to come together to engage in business ventures, while enabling those partners who do not wish to engage in the management of the limited partnership to invest in the limited partnership’s commercial activity, while limiting their liability to the amount of their capital contributions.

#### 1.2 **Important Economic Purpose**

Given that limited partnerships are tax transparent, and relatively straightforward to establish and operate, they serve an important economic purpose in Ireland. Limited partnerships have historically been the business structure of choice for private equity, venture capital, debt and real estate funds, and facilitate the pooling of both expertise and investment. Limited partnerships are used across a wide range of Irish economic sectors, including renewable energy, agri-food, forestry, manufacturing, technology, engineering, construction and property development, tourism, professional services and investment, and channel important investment into indigenous sectors such as infrastructure, real estate, forestry and energy.

#### 1.3 **Job Creation**

Ensuring that Ireland is an attractive jurisdiction in which to establish a limited partnership will continue to facilitate job creation.

Internationally, limited partnership structures tend to be the business structure of choice for private equity and venture capital firms – modernising Ireland’s limited partnership regime, and attracting further global investors to Ireland who wish to use a fit-for-purpose limited partnership structure to invest in indigenous businesses, will result in job growth. Large-scale investment groups will require a physical presence in Ireland and Irish staff to operate effectively, and will need the assistance of Ireland’s professional services firms to facilitate their ongoing business models. In particular, a modernised limited partnership framework in Ireland would be extremely attractive to the global funds industry. The Irish funds industry accounts for a large proportion of the €2.3bn in taxes contributed by the financial services industry to the

Irish economy each year,<sup>1</sup> and in 2018, employed over 16,000 funds professionals in Ireland.<sup>2</sup> Given that all investment funds and investment vehicles require service providers (such as fund administrators, accountants, company secretaries and depositary services), making an improved limited partnership structure available would further promote Ireland as a domicile of choice for fund business.

#### 1.4 Other Jurisdictions

Other jurisdictions have, in recent years, overhauled their limited partnership frameworks with a view to attracting global investment, most notably, the UK, Luxembourg, Jersey and Guernsey. If the Irish limited partnership framework is not reformed and modernised, global investors are likely to choose to invest in one of those jurisdictions rather than in Ireland, which will have a negative effect on the Irish economy.

#### 1.5 Brexit

The exit of the UK from the European Union is a further strong incentive to reform Ireland's limited partnership framework to ensure that Ireland can compete for international business. Following the UK's departure from the EU, UK limited partnerships will no longer constitute EU alternative investment funds under the framework introduced by the Alternative Investment Fund Managers Directive ("AIFMD"), meaning that those UK limited partnerships will no longer benefit from the marketing passport under the AIFMD.

Limited partnership law in Ireland and in the UK is based on the original 1907 Act (with later jurisdiction-specific amendments applicable in the UK), and is also subject to many provisions of the Partnership Act 1890 (the "1890 Act") which applies in both jurisdictions. Ireland's status as the only other English speaking common law jurisdiction in the EU post-Brexit will afford it a unique opportunity to attract international business, in particular in the area of investment funds, from those who would have, to date, favoured the UK as a jurisdiction for limited partnerships. However, a modern Irish limited partnership framework is key to facilitating this. In 2009 and again in 2017, significant work was undertaken in the UK to reform its limited partnership framework (by way of the Legislative Reform (Limited Partnerships) Order 2009 and the Legislative Reform (Private Fund Limited Partnerships) Order 2017). Following an April 2018 consultation by the UK's Department of Business, Energy and Industrial Strategy's on [Limited Partnerships: Reform of Limited Partnership Law](#), the UK Government signalled, in December 2018, its intention to introduce further changes to the UK's limited partnership regime (see the UK Government's response to the April 2018 consultation [here](#)). It is vital that Ireland keeps pace with the changes in the UK, and those in other jurisdictions such as Luxembourg.

## 2. Given developments in the law governing business activity since 1907 is there a continued need for limited partnerships? Please set out any reasons or evidence for your opinion.

### 2.1 Significant and Continuing Business Need

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<sup>1</sup> According to IDA Ireland's ['Doing Business Here'](#), "International banks, investment managers, insurers, aircraft leasing operators and an array of other financial firms employ over 42,000 people and contribute €2.3bn each year in taxes."

<sup>2</sup> Source: Irish Funds' 'Why Ireland' brochure (April 2018).

In our view, there is a significant and continuing business need for limited partnerships. In our experience, Irish limited partnerships are a key feature in international corporate structures with a presence in Ireland, and in circumstances where transactions are being structured and based out of Ireland, or when transactions otherwise have a link to Ireland. There is also global investor familiarity with the limited partnership as a business structure. It is, however, imperative that the 1907 Act as it applies in Ireland is modernised, and that other steps are taken (as detailed in this response) to ensure that Ireland can continue to compete internationally for limited partnership business, to ensure that it remains a jurisdiction of choice for international investors and funds. We continue to see international investors direct their limited partnership business to jurisdictions with modernised limited partnership frameworks. In our experience, the UK tended to be the jurisdiction of choice once it began to overhaul its limited partnership framework in 2009 but, in light of Brexit, jurisdictions such as Luxembourg and the Channel Islands are now benefiting from international investment that we feel could instead be directed towards Ireland if the Irish limited partnership framework was to be reformed.

## 2.2 **Economic Value**

In our response to question 1 above, we outlined the importance of limited partnerships to the Irish economy, and it is important that the valuable economic contribution made by limited partnerships continues to be recognised and supported in Ireland. However, other Irish business structures have been recently modernised, and the 1907 Act is very much the exception.<sup>3</sup> The wide range of Irish economic sectors in which limited partnerships are used indicates their continuing economic importance, and their attractiveness as a structure for engaging in business activity. Limited partnerships:

- (a) are tax transparent (which is consistent with the general position in other jurisdictions);
- (b) facilitate flexible organisational structures;
- (c) can accommodate the wide-range of regulatory requirements to which investors may be subject;
- (d) enable investors to agree key contractual parameters in a limited partnership agreement, in particular fee structures and payment waterfalls; and
- (e) are a business structure of choice internationally.

## 2.3 **Global Familiarity**

As mentioned above, there is global investor familiarity with the limited partnership, and it continues to be seen as an economically and commercially sound business structure. However, as mentioned above, the fact that the 1907 Act has not kept pace with global demand for limited partnership structures means that valuable business is going to other jurisdictions, with the resulting employment and revenue benefits, and Ireland is not in a position to compete strongly for this business.

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<sup>3</sup> Irish company law was reformed by the Companies Act 2014, the Irish Collective Asset-management Vehicle was launched by the Irish Collective Asset-management Vehicle Act 2015, and the work is ongoing to overhaul the Investment Limited Partnerships Act 1994.

3. **Please set out your views on the possible reasons why there has been an increase in limited partnership registrations since the end of 2015.**

- 3.1 87 limited partnerships were registered in 2015,<sup>4</sup> with 431 registered in 2016,<sup>5</sup> 676 registered in 2017<sup>6</sup> and 338 registered in 2018.<sup>7</sup> Based on these figures, there was a sharp increase in limited partnership registrations between 2015 and 2016, and a more limited increase in limited partnership registrations between 2016 and 2017. However, there was a decrease of almost 50% in limited partnership registrations between 2017 and 2018.
- 3.2 We do not have direct evidence of any specific reason(s) for the increases in limited partnership registrations in 2015-2016 and 2016-2017. We note that the April 2018 Department of Business, Energy and Industrial Strategy's consultation in the UK on [Limited Partnerships: Reform of Limited Partnership Law](#) reiterated concerns that Scottish limited partnerships were being used for "*illicit purposes*",<sup>8</sup> but we are not aware of any similar concerns regarding Irish limited partnerships, or regarding those established in England and Wales, or in Northern Ireland.
- 3.3 As to possible reasons for the decrease in limited partnership registrations between 2017 and 2018, see our comments on the introduction of a new limited partnership regime in Luxembourg at paragraph 11.1 below, and we reiterate our concerns that Ireland is losing global investment opportunities to jurisdictions with modernised limited partnership regimes.

4. **Please set out your views on whether limited partnerships should be required to use the term "Limited Partnership" in the business name.**

- 4.1 In our view, a limited partnership should be required to use the term "*Limited Partnership*" or "*LP*" (or the Irish equivalent thereof) in its name to ensure that it is readily identifiable as a limited partnership. Without this requirement, third parties dealing with a limited partnership may not be on notice of the limited liability of most of the partners in the partnership.<sup>9</sup> As such, a change of this nature to the 1907 Act is important from a transparency perspective for registrations of new limited partnerships. The abbreviation "*LP*" is commonly understood by the international business community as referring to a limited partnership.
- 4.2 By way of comparison, from an Irish law perspective:
- (a) under section 12(2) of the Investment Limited Partnerships Act 1994, an investment limited partnership must use one of the following terms in its name: "*investment limited partnership*", "*ILP*", "*comhpháirtíocht theoranta infheisíochta*" or "*cit*";

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<sup>4</sup> According to the Companies Registration Office Report 2015.

<sup>5</sup> According to the Companies Registration Office Report 2016.

<sup>6</sup> According to the Companies Registration Office Report 2017.

<sup>7</sup> This figure is based on the Companies Registration Office's list of Limited Partnerships (last updated 17 January 2019).

<sup>8</sup> At paragraph 6 of the Executive Summary to that Consultation, the Department of Business, Energy and Industrial Strategy commented that the "...National Crime Agency has identified a disproportionately high volume of suspected criminal activity involving Scottish limited partnerships, and there have been prominent examples of them featuring in international money laundering schemes that have made international headlines."

<sup>9</sup> Based on a review of the Register of Limited Partnerships, in recent years there has been a growing trend towards the inclusion of the term "*Limited Partnership*" or "*LP*" in the name of a limited partnership.

- (b) under sections 26(1)-(3) of the Companies Act 2014, the name of a private company limited by shares must end with “limited”, “teoranta”, “ltd”, “LTD”, “teo” or “TEO”;<sup>10</sup> and
- (c) under section 29(1) of the Irish Collective Asset-management Vehicles Act 2015, the name of an Irish collective asset-management vehicle must end in “Irish Collective Asset-management Vehicle” or “ICAV”.

There is no reason why a limited partnership should not be subject to equivalent requirements.

- 4.3 We have suggested at paragraph 11.7 below that consideration should be given to enabling limited partnerships to opt for separate legal personality (as is the case in Luxembourg, which has two types of limited partnership: the *société en commandite* (which has separate legal personality), and the special limited partnership (*société en commandite spéciale*) (which does not have separate legal personality)). In that case, we suggest that a different naming convention would apply to limited partnerships with separate legal personality, so as to distinguish them from traditional limited partnerships.
- 4.4 We note that a similar change was made in 2009 to the 1907 Act as it applies in the UK. Section 8B of the 1907 Act was inserted by the Legislative Reform (Limited Partnerships) Order 2009, with the new sub-section 8B(2) providing that the name of a limited partnership must “end with...the words “limited partnership” (upper or lower case, or any combination), or...the abbreviation “LP” (upper or lower case, or any combination, with or without punctuation).”
- 5. **Please set out your views on whether limited partnerships should be required to maintain a principal place of business and a registered office in the State.**
  - 5.1 Under section 8 of the 1907 Act, the application for registration of a limited partnership must be made “...to the registrar at the register office in that part of [Ireland]<sup>11</sup> in which the principal place of business of the limited partnership is situated or proposed to be situated...”
  - 5.2 As such, while a limited partnership must have (or propose to have) a principal place of business in Ireland at the time that it registers as a limited partnership, the 1907 Act does not require the limited partnership to maintain that principal place of business in the State. Rather, pursuant to section 9(1)(c) of the 1907 Act, the limited partnership must simply notify the Registrar of Limited Partnerships (the “**Registrar**”) where there is a change to its principal place of business (using the Companies Registration Office (“**CRO**”) Form LP2).
  - 5.3 In our view, a limited partnership should not be required to maintain its principal place of business in Ireland on an ongoing basis. However, it is important that there is an address for the limited partnership in the State which can be used for the service

<sup>10</sup> Similar requirements apply to other types of company formed under the Companies Act 2014: the name of a designated activity company must end with “designated activity company”, “cuideachta ghníomhaíochta ainmnithe” or a permitted variation thereof (section 969 of the Companies Act); the name of a public limited company must end with “public limited company”, “cuideachta phoiblí teoranta” or a permitted variation thereof (section 1008 of the Companies Act, and this provision also applies to an investment company under Part 24 of that Act); the name of a company limited by guarantee must end with “company limited by guarantee”, “cuideachta faoi theorainn ráthaíochta” or a permitted variation thereof (section 1178 of the Companies Act); and the name of an unlimited company must end with “unlimited company”, “cuideachta neamhtheoranta” or a permitted variation thereof (section 1237 of the Companies Act).

<sup>11</sup> The reference to “the United Kingdom” in section 8 of the 1907 Act is adapted to refer to “Ireland” pursuant to section 3 of the Adaptation of Enactments Act 1922.

of notices or of process, and to which correspondence can be sent by the Registrar (a “**Service Address**”). We suggest that the CRO Form LP2 be updated to reflect this. At the moment, the CRO Form LP2 only provides an option for the limited partnership to notify a “*new place of business*” in place of the “*previous place of business*”. Instead, the CRO Form LP2 should give the limited partnership the option to notify the Registrar of a “*new principal place of business or service address in the State (if the principal place of business is outside the State)*” in place of a “*previous place of business or service address*”.

6. **Please set out your views on whether limited partnerships should be required to make an annual return to the Registrar similar to obligations on companies.**

- 6.1 Limited partnerships are structured differently to companies so, in our view, imposing a directly-equivalent obligation on limited partnerships to file an annual return in the same way as companies are required to do so under the Companies Act does not take account of the key differences between limited partnerships and companies.
- 6.2 In our view it would be useful if limited partnerships were required to provide an annual confirmation to the Registrar, enabling the Registrar to determine the current status of the limited partnership (i.e. whether it is active, dormant, being dissolved, being wound-up etc.) (an “**Annual Confirmation Statement**”). We would suggest that the Annual Confirmation Statement seek the following information:
- (a) name of the limited partnership;
  - (b) principal place of business of the limited partnership;
  - (c) the limited partnership’s Service Address in Ireland (if its principal place of business is not in Ireland);
  - (d) the name and address of each general partner;
  - (e) the aggregate amount of the capital contributions made by the limited partners;<sup>12</sup>
  - (f) the capital contributions made by each general partner;
  - (g) the status of the limited partnership i.e.:
    - (i) whether it is active;
    - (ii) whether it has ceased to carry on business;
    - (iii) whether it has been dissolved and its affairs are in the process of being wound-up; or
    - (iv) whether it has been dissolved and its affairs have already been wound-up.
- 6.3 While a section has been added to the CRO Form LP2 (which a general partner must file if there is a change in the information originally filed in respect of the limited partnership) that must be completed where the limited partnership has ceased to carry on business, there is no provision in the 1907 Act underpinning the request for that information to be included, and it does not distinguish between the three scenarios at

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<sup>12</sup> Not broken down by limited partner.

paragraph 6.2(g)(ii) to 6.2(g)(iv) above. As such, it is by no means certain whether this request being complied with to any significant extent by limited partnerships (as there is no penalty for not notifying the Registrar of a cessation of business). In light of this:

- (a) we suggest that the 1907 Act be amended to include a positive obligation on all limited partnerships to notify the Registrar within a particular time-frame of ceasing to carry on business (to underpin the request for this information in the CRO Form LP2); and
- (b) we suggest that the CRO Form LP2 be updated to distinguish between the three scenarios at 6.2(g)(ii) to 6.2(g)(iv) above.

6.4 Failure to file the Annual Confirmation Statement should expose the general partner(s) to fines (similar to the fines imposed on companies and their officers for failures to comply with various requirements of the Companies Act, and a failure to file a CRO Form LP2 currently exposes the general partner to a daily class E fine (currently €500)). The 1907 Act should expressly provide that any failure to file the Annual Confirmation Statement or the CRO Form LP2 should not trigger a loss of limited liability for the limited partners in a limited partnership (noting that shareholders in a limited liability company do not lose the protection of limited liability if the company or its officers delay in making, or fail to make, a CRO filing).

**7. Please set out your views on how the annual return should be made and who should be responsible for making it.**

- 7.1 See our response to question 6 above suggesting the use of an Annual Confirmation Statement, rather than an annual return.
- 7.2 The Annual Confirmation Statement should be signed by the general partner(s), and should be capable of being filed electronically using the CRO's CORE electronic filing system. The benefits of the Registrar receiving Annual Confirmation Statements from all limited partnerships link directly to our comments at 11.4 below regarding the need for the Register of Limited Partnerships (the "**Register**") to be modernised.

**8. Please set out your views on whether all limited partnerships should be required to file financial statements.**

- 8.1 In our view, requirements for additional financial statement beyond those which currently apply to limited partnerships should not be imposed.
- 8.2 A limited partnership is structured differently to a company established under the Companies Act (i.e. a company has separate legal personality, its organisational structure is different and it is not, unlike a limited partnership, tax transparent). As such, imposing a directly equivalent financial statements framework on limited partnerships is not, in our view, appropriate and could further impact Ireland's ability to compete for limited partnership business. Indeed, in the [UK Government's response](#) to its Department of Business, Energy & Industrial Strategy's April 2018 consultation on Limited Partnerships: Reform of Limited Partnership Law, it signalled that it did "*not consider the case has been made for all LPs to prepare accounts and reports in line with limited companies*".<sup>13</sup>

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<sup>13</sup> At paragraph 23 (on page 12) of the [UK Government's response](#).

8.3 Many limited partnerships are already required to file financial statements under the European Communities (Accounts) Regulations 1993. Where the general partner in a limited partnership is a limited liability company, it must file financial statements for the limited partnership within six months of the end of the limited partnership's financial year – those financial statements must include a balance sheet, profit and loss account, partners' report and auditor's report. Imposing additional requirements would substantially increase the compliance cost and administrative burden associated with managing a limited partnership.

9. **What are your views on giving the Registrar powers to remove and strike-off limited partnerships from the register?**

9.1 The 1907 Act does not empower the Registrar to remove or strike-off a limited partnership from the Register. As a result, the Register does not provide an accurate picture of the number of active limited partnerships operating in Ireland. See further our comments at paragraph 11.4 below regarding the need to modernise the format of the Register.

9.2 In our view, the Registrar should also be given the power, similar to that which exists for registered companies,<sup>14</sup> to strike off limited partnerships. We suggest that the Registrar be given the power to remove and strike-off limited partnerships from the Register in two cases:

- (a) where the affairs of the limited partnership have been wound-up; and
- (b) where the limited partnership has failed to file an Annual Confirmation Statement (see paragraph 6 above) for a specified period of time (perhaps three consecutive years).

9.3 **Cessation/Winding-Up of Limited Partnership**

As mentioned in paragraph 6.3 above, there is no provision in the 1907 Act underpinning the additional question in the CRO Form LP2 as to whether the relevant limited partnership has ceased, and no sanction for failing to provide that information. As such, it is probable that a CRO Form LP2 is not being filed in the majority of cases where the limited partnership has ceased to operate, in particular where the change to the CRO Form LP2 post-dated that cessation.

We reiterate our suggestion at paragraph 6.3 above that section 9(1) of the 1907 Act be amended to add a statutory requirement to notify the Registrar where the limited partnership has ceased, and that similar confirmation be sought in the Annual Confirmation Statement (see our suggestion at paragraph 6.2 above).

There are various circumstances in which a limited partnership may be dissolved (both under the 1890 Act (read together with the 1907 Act), and as may be set out in the applicable limited partnership agreement). Once the limited partnership is dissolved (and this may take place on foot of the actions of the partners, or pursuant to a Court order under section 35 of the 1890 Act), the affairs of the limited partnership are then wound-up by the general partner.<sup>15</sup> So, when a limited partnership reaches an end, there is first a dissolution, and then a winding-up of the limited partnership's affairs. The limited partnership "ceases" on dissolution, however, the question arises as to when is the appropriate time for the Registrar to

<sup>14</sup> Companies Act 2014, Part 12 (*Strike Off and Restoration*).

<sup>15</sup> Limited Partnerships Act 1907, section 6(3) (and subject to the Court ordering otherwise).

strike a limited partnership from the Register. As mentioned at paragraphs 6.2 and 6.3 above, we suggest that section 9(1) of the 1907 Act, and the linked CRO Form LP2, be amended to require confirmation of whether:

- (a) the limited partnership has ceased to carry on business, but has not been dissolved (i.e. it is effectively dormant);
- (b) the limited partnership has been dissolved and the general partner is in the process of winding-up the limited partnership's affairs; or
- (c) the limited partnership has been dissolved and its affairs have been wound-up,

and we suggest that the same confirmations are sought as part of the annual confirmation statement.<sup>16</sup>

In line with our comments on the need to modernise the Register (see paragraph 11.4 below), the format of the Register should be updated to distinguish between the three scenarios referred to at 9.3(a) to 9.3(c) above (i.e. it should be possible for a third party to establish the exact status of a limited partnership that is no longer carrying on business). Where the limited partnership has been dissolved and its affairs wound-up, the Registrar should be empowered to remove that limited partnership from the Register.

#### 9.4 **Failure to file Annual Confirmation Statement**

We suggest that the Registrar be empowered to strike off a limited partnership from the Register for persistent failures to file an Annual Confirmation Statement (perhaps for three consecutive years).

#### 9.5 **Important considerations**

Our above suggestions are subject to our comments at paragraph 10 below regarding matters to be taken into account by the Registrar before removing or striking-off a limited partnership from the Register.

### 10. **What factors do you think should be considered in removing or striking-off limited partnerships from the register?**

- 10.1 It is vital that the removal of a limited partnership from the Register, or the strike-off of a limited partnership from the Register, does not impact the limited liability of the limited partners in the limited partnership (i.e. such an event does not convert the limited partnership into a general partnership).
- 10.2 If the Registrar is to be empowered to strike-off a limited partnership from the Register for persistent failures to file an Annual Confirmation Statement, it is important that a detailed framework is put in place around this, involving warnings and appropriate timeframes (similar to that imposed by the Companies Act in respect of the strike-off of companies).
- 10.3 We also suggest that, contemporaneously with any changes to the 1907 Act to give effect to a power for the Registrar to strike-off a limited partnership, provisions be included to address:

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<sup>16</sup> If the Annual Confirmation Statement is sent to all limited partnerships on the Register, that may generate more responses from dormant or dissolved limited partnerships than only amending section 9(1) of the 1907 Act and the CRO Form LP2.

- (a) how contact with limited partnerships that were registered from 1907 onwards should be managed, bearing in mind that the Register does not appear to include registration dates for most limited partnerships registered before 2008;<sup>17</sup>
- (b) how a limited partnership can apply to be restored to the Register; and
- (c) if a limited partnership is struck-off in error, how that should be managed and rectified.

**11. Please provide any other comments you wish to inform the development and direction of policy on limited partnership law.**

**11.1 Ability to compete internationally**

As mentioned throughout our response to the consultation, in our view the absence of a modern limited partnership framework in Ireland renders Ireland uncompetitive as a jurisdiction, in particular in comparison to the UK (where reforms were introduced to the 1907 Act as it applies in the UK in 2009<sup>18</sup> and in 2017;<sup>19</sup> the UK Government plans to introduce further reforms shortly<sup>20</sup>), and Luxembourg (where two new types of limited partnership: the *société en commandite* (which has separate legal personality), and the special limited partnership (*société en commandite spéciale*) (which does not have separate legal personality) have been introduced). The reforms in both the UK and Luxembourg provided much-needed clarity to investment funds, private equity firms and venture capital firms who wish to base their limited partnership business in those jurisdictions. The UK's Department for Business, Energy & Industrial Strategy in its 30 April 2018 consultation on [Limited Partnerships: Reform of Limited Partnership Law](#), noted<sup>1</sup> that one of the possible causes for the reduction in the number of Scottish Limited Partnerships from June 2017 onwards may have been the introduction, in Luxembourg, of the two new types of limited partnership, commenting that this “*may have attracted some in the private equity and venture capital sector to establish new funds in Luxembourg as opposed to the UK*”. Importantly, as noted at paragraph 3 above above, there has been a similar drop-off in the number of limited partnerships registered in Ireland as between 2017 (676) and 2018 (338). In our view, this decrease is more concerning than the increase in the number of limited partnerships registered in Ireland between 2015 and 2017, as it could indicate a growing trend to use an alternative jurisdiction with a more modern limited partnership framework.

**11.2 The restriction on the number of partners should be removed**

The restriction on the number of partners in a limited partnership set out in section 4(2) of the 1907 Act should be removed. This would necessitate consequent amendments to section 1435 of the Companies Act. The restriction was relevant when the 1907 Act was introduced, as at that time, to sue a limited partnership, action needed to be taken against each partner individually. However, Order 14, Rule 1 of the Rules of the Superior Courts now provides that a partnership may sue or be sued in its firm name, so the rationale behind the limit on the number of partners no longer applies. We note that, in Great Britain, The Regulatory Reform (Reform of 20

<sup>17</sup> The registration dates for 778 Irish limited partnerships are categorised as “Data Unavailable”.

<sup>18</sup> By way of the Legislative Reform (Limited Partnerships) Order 2009.

<sup>19</sup> By way of the Legislative Reform (Private Fund Limited Partnerships) Order 2017.

<sup>20</sup> See the UK Government's December 2018 response ([available here](#)) to the UK Department of Business, Energy & Industrial Strategy's consultation on '*Limited Partnerships: Reform of Limited Partnership Law*'.

Member Limit in Partnerships etc.) Order 2002 removed any limit on the number of partners in a limited partnership in Great Britain. In Northern Ireland, the limit was subsequently removed by The Partnerships etc. (Removal of Twenty Member Limit) (Northern Ireland) Order 2003.

#### 11.3 **A ‘whitelist’ of permitted actions for limited partners should be introduced**

In line with developments in other jurisdictions (for example, in respect of the private fund limited partnership (“PFLP”) introduced in the UK by the Legislative Reform (Private Fund Limited Partnerships) Order 2017), a ‘*white list*’ should be developed and included in the 1907 Act of actions which limited partners in a limited partnership are permitted to take without risking the loss of their limited liability status.

This proposal is not intended to conflict with the fundamental principle of limited partnership law that limited partners should not participate in the management of the limited partnership, but would provide much-needed clarity on what does, and does not, constitute “*management*” – this is an area on which there is little, if any, jurisprudence in Ireland or in the UK.

#### 11.4 **The Register should be modernised**

The format of the Register should be updated to reflect the information sought as part of the proposed Annual Confirmation Statement, detailed earlier in this submission, and electronic filing of the Annual Confirmation Statement and all other limited partnership-related filings should be facilitated.

The Register is currently updated monthly and contains very limited information; this presents considerable practical issues for limited partnerships, as banks and professional services firms are generally not comfortable to rely on the Register as evidence that the limited partnership is in existence. We suggest that the Register be re-calibrated to align with the form of the register used for companies, which is updated daily, and in respect of which data is made available to third party service providers, who provide search functionality. If a requirement for an Annual Confirmation Statement is introduced, we suggest that it be possible to obtain a letter of status, and up-to-date report, in respect of a limited partnership in the same way as can currently be obtained in respect of a company. We also suggest that procedures are put in place, similar to those applicable to companies, whereby digital copies of filings made with the CRO by limited partnerships are readily obtainable by third parties.

#### 11.5 **Filings/Failure to File**

We suggest that the time-frames within which filings should be made by a general partner on behalf of a limited partnership with the Registrar be extended to align with those applicable to companies (e.g. from 7 days to 21 days).

We also suggest that a failure to file should lead to the imposition of fines on general partners (similar to the fines imposed on companies and their officers for failures to comply with various requirements of the Companies Act) but that express provision should be made in the 1907 Act that any failure to make a required filing on time, or to file the proposed Annual Confirmation Statement on time, should not trigger a loss of limited liability for the limited partners in a limited partnership (noting that shareholders in a limited liability company do not lose the protection of limited liability if the company or its officers delay in making, or fail to make, a CRO filing).

In our view, the failure of a general partner to register the limited partnership with the Registrar should not render it a general partnership, but should instead expose the general partner to fines.

#### 11.6 **Capital Contributions/Details of Limited Partners**

The 1907 Act requires limited partners to make capital contributions to the limited partnership which the limited partner cannot withdraw until the end of the life of the partnership.

In light of this, a *'loan-capital split'* is often used, whereby a limited partner makes a small capital contribution to the partnership (0.01% of its commitment), with the bulk of the partner's commitment being advanced as an interest-free loan (99.99%).

Following the introduction of the PFLP in the UK in 2017 pursuant to the Legislative Reform (Private Fund Limited Partnerships) Order 2017, the requirement to make capital contributions (and the resulting need for a loan-capital split) no longer applies in respect of the PFLP: limited partners in a PFLP are not required to make a capital contribution to the limited partnership, and the requirement to potentially return any capital contributions withdrawn prior to the end of the life of the limited partnership does not apply. The UK approach is also consistent with the Luxembourg position in respect of the *société en commandite spéciale*, and limited partnership vehicles in other jurisdictions.

In light of the above, we suggest that the requirement for limited partners to make capital contributions to the limited partnership be removed.

We also suggest that a limited partnership not be required to make publicly available details of the limited partners (or the individual amounts of any capital contributions made by them). We have suggested above that the Annual Confirmation Statement instead require confirmation of the aggregate amount of the capital contributions made by the limited partners (not broken down on a per-limited partner basis), and resulting changes would also be needed to the suite of CRO forms for limited partnerships.

#### 11.7 **Separate Legal Personality**

We suggest that consideration be given to allowing limited partnerships to choose to have separate legal personality (a similar option is available in Luxembourg) while maintaining tax transparency, and that limited partnerships with separate legal personality be permitted to own assets in the name of the limited partnership itself.

#### 11.8 **Assignment of Interests**

Aligned with our suggestions at paragraph 11.6 above, in our view the requirement that any assignment of a limited partnership interest be advertised in *Iris Oifigiúil* should be removed.

#### 11.9 **Winding-Up a Limited Partnership**

When a limited partnership is dissolved, section 6(3) of the 1907 Act empowers the general partner(s) to wind-up the limited partnership. We suggest that the 1907 Act be updated to empower the limited partners to wind-up the limited partnership where the general partner is unwilling or unable to do so. We also suggest that the Courts be given the power to wind-up a limited partnership if necessary.

#### 11.10 **Dissolution of a Limited Partnership**

We suggest that the 1907 Act expressly clarifies that a limited partnership will not be subject to a technical or general dissolution when the composition of partners changes, provided that, at all times, there is at least one general partner and at least one limited partner.

#### 11.11 **Restrictions on Limited Partners**

We suggest that the 1907 Act be amended to remove any restriction on limited partners competing with the limited partnership, and to confirm that duties to render accounts and information on matters affecting the limited partnership to not apply to the limited partners, as these are inconsistent with the restriction on limited partners being involved in the management of the limited partnership. If a limited partnership wishes to impose restrictions on its limited partners, we submit that those would be more appropriately dealt with in the limited partnership's bespoke partnership agreement.

#### 11.12 **General Updates to 1907 Act**

A number of general updates to the 1907 Act are required to deal with out-of-date/historic references (including references to the United Kingdom, to the Dublin Gazette, to pounds and shillings, to the Summary Jurisdiction Acts, and to lunatics).